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Bcc: []
From: CN=Sarah Flanagan/OU=R2/O=USEPA/C=US
Sent: Thur 6/7/2012 3:17:56 PM
Subject: Diamond Alkali LPRSA - RM 10.9

Gary,

Thank you for your email clarifying your role, in response to my email of yesterday evening. Given that EPA perceives negotiations with respect to the AOC to be complete, I think you will understand my confusion upon receiving your voicemail last yesterday about the propriety of my communicating with Bill Hyatt.

While I was awaiting your response, it occurred to me that it would be helpful to explain EPA's position with respect to the RM 10.9 removal AOC in writing.

First, let me reiterate that EPA really appreciates the willingness of the CPG to perform the removal activities, even without the participation of Occidental Chemical Corporation, Maxus Energy Corporation and Tierra Solutions, Inc. We do also hope that the bench-scale tests, and possible pilot studies, will provide useful information, as I am sure the CPG does. This is a great opportunity to forge an even stronger, effective, working relationship.

We also appreciate the lengths that you have gone to, in communicating with EPA about the basis for the CPG's request that EPA wait another two weeks for signatures on the AOC. As you know, the decision to wait another two weeks was not a decision that EPA made lightly. Understanding the complexity of the process of determining the roster of settling parties and allocating costs -- which was the basis for the request for an extension -- was extremely helpful.

With respect to the proposed changes to the AOC contained in the June 4, 2012 mark up, however, it seems that the CPG may not fully grasp that EPA agreed to extend the date to collect signature pages, not for the purpose of reopening negotiations. As I have previously said, the request for substantive changes to the AOC is inconsistent with the representation that the CPG had approved the AOC. Similarly, the request for changes to the schedule in the SOW is inconsistent with statements that the schedule would not be affected by an extension.

The proposed change to the Future Response Costs is particularly surprising, given that EPA has explained several times that we already revised the Future Response Costs language in response to the discussion on May 10, 2012, about the burden of funding the removal action and paying EPA oversight costs if some CPG members declined to participate; and that we are not going to negotiate this point any further. My letter dated May 31, 2012 said this, and you and I had discussed it. It is very difficult to discern what the CPG could have hoped to achieve by proposing to reduce the Future Response Costs still further, in the mark up that I received on June 4, 2012.

The June 4, 2012 mark-up also proposed changes to language in paragraph 14, concerning EPA's approval of contractors. This is standard language that EPA finds necessary and important, particularly for work of the scope that is contemplated in this AOC.

The June 4, 2012 mark-up proposed changes to paragraph 84, addressing financial assurance, that are unnecessary and would add an administrative burden to EPA if the funding schedule for the removal action were to change. The last sentence is inconsistent with the language of the Trust Agreement itself.

A number of the changes proposed to the EPA Findings of Fact and Conclusions of Law would in EPA's view render an inaccurate picture of the conditions at RM 10.9 that led EPA to seek the removal action. It was my understanding that the CPG might propose to restore some of the language in the original draft that EPA generated. The changes proposed go substantially beyond that. If the CPG had requested to restore one or two factual elements from EPA's original draft, EPA would have been in a position to consider the request, but alas, that is very much not the nature of the mark-up that we received.

I hope we can get this matter back onto a positive footing, as it is not a productive use of time to revisit issues that are closed for discussion. EPA has much to do on this end to make this project go smoothly, and we think it would be a direct benefit to the CPG to bring a halt to these last minute attempts to revise the terms of our agreement, and move forward with the work.

Please let me know if there is anything else you would like to discuss about the AOC that has not been touched on in this email. I will be available this afternoon after 2 pm, and all day tomorrow.

Regards,

-Sarah

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